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4 Attorneys for Plaintiff,  
5 Andrea Guy Jackson

6 UNITED STATES DISTRICT COURT  
7 CENTRAL DISTRICT OF CALIFORNIA

8 ANDREA GUY JACKSON,

9 Plaintiff,

10 vs.

11 CITY OF BEVERLY HILLS; and  
12 DOES 1 THROUGH 20, inclusive,

13 Defendants.

) CASE NO.: CV-10-2143 DMG (Jcx)

) PLAINTIFF'S OPPOSITION TO  
) DEFENDANT'S NOTICE OF MOTION  
) AND MOTION TO DISMISS THE  
) SECOND AMENDED COMPLAINT  
) PURSUANT TO FEDERAL RULE OF  
) CIVIL PROCEDURE 12(b)(6);  
) MEMORANDUM OF POINTS AND  
) AUTHORITIES IN SUPPORT  
) THEREOF

) Hearing Date: May 24, 2010

) Time: 9:30 a.m.

) Courtroom: Hon. Dolly M. Gee  
Courtroom 7

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Plaintiff ANDREA GUY JACKSON, by and through her attorney of record, Leo James Terrell, hereby submits the following Opposition to Defendant's 12(b)(6) Motion to Dismiss for failure to state a claim. This Opposition is based on the following grounds:

1) Plaintiff has exhausted her administrative remedies with respect to her first Cause of Action for retaliation when she received the Right-to-Sue Notice from the DFEH,

2) Plaintiff had 300 days from the date of the last discriminatory act in which to file a Charge of Discrimination with either the Equal Employment Opportunity Commission ("EEOC") or the California Department of Fair Employment and Housing ("DFEH"),

3) The issues identified by Defendant with regard to Plaintiff's claims under the Fair Labor Standards Act ("FLSA") can be easily remedied by a Third Amended Complaint,

4) Defendant's failure to provide Plaintiff with the Settlement Agreement was an adverse employment action,

5) Plaintiff moves to amend her Complaint as necessary in order to include a claim for discrimination under the California Fair Employment and Housing Act ("FEHA").

Plaintiff notes this Motion should have been avoided. Plaintiff has repeatedly requested Defendant withdraw its Motion and stipulate to allow Plaintiff to amend her Complaint as necessary. Moreover, Plaintiff has also obtained a ruling granting her leave to amend in the case of *Wilcher v. City of Beverly Hills*, which by Defendant's own motion is related to the present case. (Notice of Related case is attached herein.) Plaintiff contends Defendant's act of submitting the same arguments in the present Motion that Defendant made in

1 *Wilcher* is an improper attempt to obtain inconsistent rulings between the two  
2 cases. Plaintiff therefore respectfully attaches the ruling of Judge Valerie  
3 Fairbanks in *Wilcher v. City of Beverly Hills*, case No. 2:10-cv-01804-VBF-AGR.

## 4 **II. STATEMENT OF FACTS**

5 Plaintiff is currently employed by Defendant City of Beverly Hills. Plaintiff  
6 began working for Defendant City in or about 1993 as a jailer for the Beverly Hills  
7 Police Department. Plaintiff continued in her position as a jailer until about  
8 November 2008 when she transferred to the Records Department.

9 From about 2007-2009, Plaintiff lodged internal complaints with Defendant  
10 City, alleging discrimination on the basis of race, harassment, hostile work  
11 environment, and retaliation.

12 After lodging these complaints, Plaintiff applied for promotional and  
13 transfer opportunities within the Beverly Hills Police Department as Jail  
14 Supervisor, in which she was well qualified for. Plaintiff was denied these  
15 opportunities while less experienced employees were awarded the promotions or  
16 transfers. Plaintiff believes the failure to be promoted or transferred to certain  
17 positions was a form of retaliation by Defendant in response to Plaintiff's prior  
18 complaints.

19 On or about August 6, 2008, Plaintiff filed a Charge of Discrimination with  
20 the EEOC against Defendant City. Plaintiff alleged that Defendant discriminated  
21 against her, harassed her and subjected her to different terms and conditions of  
22 employment because of her race.

23 Between about August 2008 and about November 2008, Defendant required  
24 Plaintiff to work 18-hour shifts in excess of 40 hours per week. During these long  
25 work shifts, Plaintiff was not afforded a meal break or even a 10 minute break  
26 because no other jailer was assigned during her shift to relieve her. As outlined in  
27 Plaintiff's Second Amended Complaint, Plaintiff was never compensated for  
28 working these long shifts that went well beyond the 12-hour shifts that she was

1 supposed to work. Plaintiff contends these subsequent acts by Defendant after  
2 Plaintiff filed her August 2008 EEOC Charge constitute a form of retaliation.

3 In or before December 2009, Plaintiff was informed by the president of the  
4 Beverly Hills Safety Support Association that a new contract entitled "Settlement  
5 Agreement and General Release of Claims" ("Settlement Agreement") was  
6 circulating from Defendant. The contract provided that employees who signed  
7 the letter would forfeit their right to sue Defendant for having to work excessive  
8 hours and, in turn, these employees would get to keep their current work  
9 schedules. Although Defendant provided the Settlement Agreement to other  
10 employees in the Records Department, the document was never offered to  
11 Plaintiff. Plaintiff contends this act by Defendant was a further act of retaliation  
12 against Plaintiff for filing the initial charge of discrimination in August 2008 with  
13 the EEOC.

14 On or about February 2, 2010, Plaintiff filed a Complaint of Discrimination  
15 with the DFEH regarding this most recent acts of retaliation by Defendant  
16 described above, for which the Right-to-Sue Notice was received in March, 2010.

### 17 **III. APPLICABLE STANDARD FOR MOTION TO DISMISS**

18 A Rule 12(b)(6) motion is similar to the common law general demurrer: i.e.,  
19 it tests the legal sufficiency of the claim or claims stated in the Complaint. When  
20 ruling on a Rule 12(b)(6) motion, the court must accept as true the facts alleged in  
21 the complaint and construe them in the light most favorable to the Plaintiff.  
22 *Vasquez v. Los Angeles County*, 487 F.3d 1246, 1249 (9th Cir. 2007).

23 Meanwhile, under Federal Rule of Civil Procedure 8(a)(2), a complaint need  
24 only contain a "short and plain statement of the claim showing that the pleader is  
25 entitled to relief." Detailed factual allegations are not required, *Bell Atlantic Corp.*  
26 *v. Twombly*, 550 U.S. 544, 555 (2007), but the Rule does call for sufficient factual  
27 matter, accepted as true, to "state a claim to relief that is plausible on its face." *Id.*  
28 at 570. A claim is plausible on its face when the pleaded factual content allows

1 the court to draw the reasonable inference that the defendant is liable for the  
2 misconduct alleged. *Id.* at 556.

#### 3 IV. ARGUMENT

##### 4 A. Defendant's Motion to Dismiss Should Be Denied Because 5 Plaintiff has Received a Right-to-Sue Notice from the DFEH

6 Rule 15(a) of the Federal Rules of Civil Procedure provides: "a party may  
7 amend its pleading with the opposing party's written consent or the court's leave.  
8 The court should freely give leave *when justice so requires.*" (Emphasis added.)  
9 Accordingly, the Ninth Circuit follows a "strong policy permitting amendment,"  
10 *Fuller v. Vines*, 36 F.3d 65, 67 (9<sup>th</sup> Cir. 1994), and cautions that leave to amend  
11 should only be denied in extreme cases such as undue delay, bad faith, or dilatory  
12 motive on the part of the movant. *Johnson v. Buckley*, 356 F.3d 1067 (9<sup>th</sup> Cir.  
13 2004).

14 Defendant contends that Plaintiff has failed to exhaust her administrative  
15 remedies prior to filing her claim for retaliation in violation of Title VII.  
16 Defendant does not dispute the City's failure to promote or transfer Plaintiff was  
17 an act of retaliation. Rather, Defendant points to Plaintiff's remaining allegations  
18 contained in her first Cause of Action, in which Plaintiff alleged retaliation by  
19 Defendant for Defendant's acts of requiring Plaintiff to work 18-hour shifts  
20 without meal or rest periods and failing to offer Plaintiff the Settlement  
21 Agreement. Although Plaintiff submitted a Complaint for these acts of retaliation  
22 to the DFEH in or about February 2010, Defendant argues Plaintiff's failure to  
23 obtain a Right-to-Sue Notice equates to a failure to exhaust administrative  
24 remedies.

25 Defendant's argument is without merit. Although several incidents  
26 contained in Plaintiff's first cause of action occurred after Plaintiff's EEOC  
27 Charge of August 2008, Plaintiff subsequently filed a Complaint of Discrimination  
28 with the DFEH on or about February 2, 2010. In this DFEH Complaint, Plaintiff

1 states she was subjected to retaliation by the Defendant in the form of the City  
2 requiring Plaintiff to work 18 hour shifts without meal or rest breaks, and failing  
3 to provide Plaintiff with a document entitled "Settlement Agreement and General  
4 Release of Claims." Therefore, while it is true these incidents were not included  
5 in the original EEOC Charge, they *were* included in the subsequent DFEH  
6 Complaint. Since the filing of Plaintiff's Second Amended Complaint, Plaintiff  
7 has received the DFEH Right-to-Sue Notice which is attached herein. Plaintiff has  
8 therefore exhausted her administrative remedies with regard to all incidents  
9 alleged in her first cause of action and accordingly moves for leave to file a Third  
10 Amended Complaint.

11 **B. The 180 Day Statute of Limitations Contained in Title VII is**  
12 **Inapplicable**

13 Pursuant to 42 U.S.C. § 2000e-8(b), state agencies are authorized to  
14 investigate and enforce Title VII claims pursuant to worksharing agreements with  
15 the EEOC. Such agreements allow for dual-filing, in which charges filed with the  
16 EEOC may be automatically forwarded to the DFEH and vice versa. *Laquaglia v.*  
17 *Rio Hotel & Casino, Inc.*, 186 F.3d 1172, 1176 (9<sup>th</sup> Cir. 1999). In the event a  
18 complaint is dual-filed, the 180 day statute of limitations provided in Title VII is  
19 inapplicable. Rather, the plaintiff will have 300 days in which to file a charge of  
20 discrimination under Title VII. *Bouman v. Block*, 940 F.2d 1211, 1220 (9<sup>th</sup> Cir.  
21 1991).

22 Plaintiff became aware of her non-selection for promotion on or about  
23 November 10, 2007, and Defendant therefore argues Plaintiff should have filed  
24 her EEOC Charge on May 8, 2008. However, as outlined above, Plaintiff had 300  
25 days from November 10, 2007 in which to file her complaint, which would have  
26 extended her time to file a complaint to September 5, 2008. Therefore, her EEOC  
27 Charge of August 2008 was timely and the 180 day limitation of Title VII is  
28 inapplicable.

1 To the extent Defendant argues Plaintiff was required to first file with the  
2 DFEH in order to extend the statute of limitations, Defendant is incorrect. In  
3 *Bouman*, the 9<sup>th</sup> Circuit expressly held that where the EEOC forwards a complaint  
4 to the appropriate state agency and defers jurisdiction, the extension period is  
5 triggered regardless of whether the complaint was first received by the EEOC or  
6 the state. *Id.* at 1220. Plaintiff's Notice to Complainant and Respondent which  
7 was received from the DFEH and dated August 21, 2008 and attached as an  
8 exhibit to Plaintiff's Second Amended Complaint, indicates the number of the  
9 corresponding EEOC Charge evidencing the Charge was dual-filed. Therefore,  
10 Defendant's contention Plaintiff's Charge was procedurally untimely is erroneous.

11 **C. Plaintiff Moves for Leave to File Her Proposed Third Amended**  
12 **Complaint with Regard to Her Claims for Violation of the FLSA**

13 In response to Plaintiff's Second Claim for Willful Violation of the FLSA,  
14 Defendant argues that 1) there is no federal requirement for daily overtime, and 2)  
15 federal law does not require meal periods or rest periods. However, as discussed  
16 below, these issues can be easily remedied by Plaintiff's proposed Third Amended  
17 Complaint.

18 **1. Defendant is Required to Compensate Plaintiff for Overtime;**  
19 **Plaintiff has not been Provided Compensatory Time in Lieu of**  
20 **Overtime Payments**

21 Defendant argues Plaintiff's Claim for willful violation of the FLSA fails  
22 because there is no federal statute that requires Defendant to provide  
23 compensation for daily overtime. Defendant notes that although the FLSA  
24 provides overtime for work in excess of 40 hours per week, Plaintiff does not  
25 allege to have worked in excess of 40 hours in any given week. Additionally,  
26 Defendant points to 29 U.S.C. § 207(o), which allows for compensatory time in  
27 lieu of overtime payments, provided that the compensatory time is made pursuant  
28 to an agreement between the employer and employee.



1 Plaintiff contends that she has not only worked in excess of 18 hours per  
2 day, but also in excess of 40 hours per week. Plaintiff notes she explicitly stated  
3 in her Second Amended Complaint that she was not compensated for these long  
4 work shifts. (SAC ¶ 20.) Therefore, Plaintiff was not provided with  
5 compensatory time pursuant to any agreement between herself and the City. In the  
6 event the Court feels that Plaintiff's claim could benefit from more specific  
7 allegations reflecting 1) that Plaintiff worked in excess of 40 hours per week, and  
8 2) Defendant failed to provide Plaintiff with compensatory time in lieu of overtime  
9 payments, Plaintiff requests permission to file a Third Amended Complaint as  
10 necessary.

11 **2. Plaintiff Contests Defendant's Failure to Provide Plaintiff**  
12 **with Meal or Rest Periods is an Act of Retaliation in**  
13 **Violation of the California Fair Employment and Housing**  
14 **Act**

15 Section 12940 of FEHA prohibits retaliation by employers. Specifically,  
16 FEHA provides that it is unlawful "[f]or any employer . . . to discharge, expel, or  
17 otherwise discriminate against any person because the person has opposed any  
18 practices forbidden under this part." Between about August 2008 and about  
19 November 2008, Plaintiff worked 18 hour shifts during which she was not  
20 afforded a meal break or even a 10 minute break because no other jailer was  
21 assigned during her shift to relieve her. As reflected in Plaintiff's February 2010  
22 DFEH Complaint of Discrimination, Plaintiff contends Defendant's actions were  
23 in retaliation against her for filing her initial DFEH Complaint in August 2008.  
24 Plaintiff respectfully moves the court for leave to file her proposed Third  
25 Amended Complaint alleging violations of FEHA.

26 //

27 //



**D. Defendant's Failure to Provide Plaintiff with the Settlement Agreement was an Adverse Employment Action**

Defendant cites to *Burlington Northern & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 57 (2006), for the proposition that an adverse action for purposes of a retaliation claim is one that is "harmful to the point that [it] could well dissuade a reasonable worker from making or supporting a charge of discrimination."

Defendant argues that the Settlement Agreement offered to other Records Department employees simply requested a forfeiture of legal rights. Accordingly, failure to provide the document to Plaintiff is not adverse action for purposes of Title VII. However, what Defendant fails to recognize is that the Settlement Agreement offered to other employees in the Records Department contained a provision that allowed employees to keep their current work schedules. Therefore, Defendant's failure to provide Plaintiff with the Settlement Agreement materially affected the terms of her employment and is thus more than just a "petty slight" or "minor annoyance." (See Defendant's Motion p. 6, lines 20-21 and citing to *Burlington*, 548 U.S. at 57, 68.) Defendant's indirect threat to change Plaintiff's work schedule by virtue of the City's failure to provide Plaintiff with the Settlement Agreement is precisely the type of adverse treatment that is "likely to deter employees from engaging in protected activity." (Defendant's Motion, p. 9, lines 5-6, citing *Ray v. Henderson*, 218 F.3d 1234, 1237 (9<sup>th</sup> Cir. 2000)).

**E. Plaintiff Moves for Leave to Amend her Complaint to Include a Claim Under FEHA**

Plaintiff notes the ruling in the related case of *Wilcher*, in which Judge Fairbanks cited to *Roman v. City of Los Angeles*, 85 Cal. App. 4<sup>th</sup> 315, 326 (2000) for the proposition that: "a claimant under Title VII must file a charge with the EEOC and receive a right-to-sue notice from the EEOC. In the event this honorable Court elects to adopt the ruling of *Wilcher*, Plaintiff respectfully moves

1 to amend her Complaint in order to add a state claim under FEHA for racial  
2 discrimination. Plaintiff contends she has exhausted her administrative remedies  
3 with respect to a state claim under FEHA in a manner consistent with the ruling in  
4 *Wilcher* because, as outlined above, she has already obtained a Right-to-Sue  
5 Notice from the DFEH.

6 **IV. CONCLUSION**

7 For all the foregoing reasons, this Court should deny, in its entirety,  
8 Defendant's 12(b)(6) Motion to Dismiss. Plaintiff respectfully moves for leave to  
9 file her a Third Amended Complaint.  
10

11  
12 Dated: April 30, 2010

By: /s/ Leo Terrell  
Leo James Terrell  
Attorney for Plaintiff, Andrea Guy Jackson  
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Subj: Activity in Case 2:10-cv-01804-VBF-AGR Peggy A. Wilcher v. City of Beverly Hills et al Order  
on Motion to Dismiss  
Date: 4/21/2010 2:14:53 P.M. Pacific Daylight Time  
From: [cacd\\_ecfmail@cacd.uscourts.gov](mailto:cacd_ecfmail@cacd.uscourts.gov)  
To: [ecfnef@cacd.uscourts.gov](mailto:ecfnef@cacd.uscourts.gov)

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

**Notice of Electronic Filing**

The following transaction was entered on 4/21/2010 at 2:13 PM PDT and filed on 4/21/2010

**Case Name:** Peggy A. Wilcher v. City of Beverly Hills et al

**Case Number:** 2:10-cv-01804-VBF-AGR

**Filer:**

**Document Number:** 17

**Docket Text:**

**MINUTES (IN CHAMBERS): ORDER by Judge Valerie Baker Fairbank granting in part and denying in part [6] Motion to Dismiss Second Amended Complaint. (kbr)**

**2:10-cv-01804-VBF-AGR Notice has been electronically mailed to:**

Nicole D Gomes [nicole.gomes@hro.com](mailto:nicole.gomes@hro.com)

Leo James Terrell [civil1975@aol.com](mailto:civil1975@aol.com)

Donald L Samuels [suzanne.coffman@hro.com](mailto:suzanne.coffman@hro.com), [donald.samuels@hro.com](mailto:donald.samuels@hro.com)

**2:10-cv-01804-VBF-AGR Notice has been delivered by First Class U. S. Mail or by fax to :**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. CV 10-1804-VBF(AGRx)

Dated: April 21, 2010

Title: Peggy A. Wilcher -v- City of Beverly Hills, et al.

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PRESENT: HONORABLE VALERIE BAKER FAIRBANK, U.S. DISTRICT JUDGE

Rita Sanchez  
Courtroom Deputy

None Present  
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

None Present

None Present

PROCEEDINGS (IN CHAMBERS):

RULING ON DEFENDANT CITY OF BEVERLY  
HILLS' MOTION TO DISMISS SECOND  
AMENDED COMPLAINT PURSUANT TO FEDERAL  
RULE OF CIVIL PROCEDURE 12(b)(6)  
[Dkt. #6]

Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. The hearing calendared for this Motion on April 26, 2010 at 1:30 p.m. is hereby vacated and the matter taken off calendar.

I. RULING

The Court has received, read, and considered Defendant City of Beverly Hills' Motion to Dismiss the Second Amended Complaint (SAC) Pursuant to Federal rule of Civil Procedure 12(b)(6) (dkt. #6); Plaintiff's Opposition (dkt. #7); and Defendant's Reply (dkt. #12). The Court rules as follows:

1. The Court GRANTS Defendant's Motion on the First Cause of Action (Retaliation in Violation of Title VII), with leave to amend. Plaintiff has failed to allege that she exhausted her administrative

MINUTES FORM 90  
CIVIL - GEN

Initials of Deputy Clerk rs

remedies for her retaliation claims that are set forth in the Second Amended Complaint.

2. The Court GRANTS Defendant's Motion on the Second Cause of Action (Willful Violation of the FLSA) with leave to amend, as to Plaintiff's claim that she was not compensated for overtime work. Plaintiff failed to allege that Defendant did not provide her with compensatory time off in lieu of overtime pay.

The Court denies Defendant's Motion, without prejudice, as to Plaintiff's claims that she was not provided meal or rest periods. Defendant has not provided adequate support that these claims should be dismissed as a matter of law.

3. The Court DENIES Defendant's Motion as to the Third Cause of Action (Retaliation in Violation of the FLSA) without prejudice. Defendant has not adequately shown that Plaintiff's claim is insufficient as a matter of law.

Plaintiff shall have 15 days to file an amended complaint. Defendant shall have 15 days thereafter to respond.

In addition, the Court notes that in the Opposition, Plaintiff requests for leave to file a Third Amended Complaint and attaches a Proposed Third Amended Complaint. This request not appropriate and therefore disregarded.

## II. ANALYSIS

### A. First Cause of Action: Retaliation in Violation of Title VII

"Under Title VII, a plaintiff must exhaust her administrative remedies by filing a timely charge with the EEOC, or the appropriate state agency." *B.K.B. v. Maui Police Dep't.*, 276 F.3d 1091, 1099 (9th Cir. 2002). "[T]he plaintiff is permitted to assert in her civil complaint any claims reasonably related to her original theory of the case as it is made manifest in the factual allegations of her charge [to the EEOC]. Title VII does not require that the plaintiff separately exhaust additional claims that are 'so closely related [to the allegations made in the charge] that agency action would be redundant.'" *Id.* at 1102 (quoting *Sosa v. Hiraoka*, 920 F.2d 1451, 1457 n.2 (9th Cir. 1990)).

Plaintiff's retaliation charges in the SAC include the following three acts: (1) Plaintiff was denied promotional and transfer

opportunities; (2) Plaintiff was required to work 10 hour shifts during which she was not provided with meal or rest periods; and (3) Plaintiff was not provided with a copy of a "Settlement Agreement and General Release of Claims" contract. See SAC (dkt. #1) ¶ 29. Plaintiff's charge filed with the EEOC in October 2008 only includes the allegation that she was denied additional personnel to assist with bookings. See SAC Exh. 3.

The Court grants Defendant's Motion on the First Cause of Action with leave to amend. As reflected in the moving papers, Plaintiff's claims in the SAC deal with different factual allegations of retaliation that are not encompassed in the charge filed with the EEOC in October 2008.

Additionally, Plaintiff's argument that she has exhausted administrative remedies by submitting a charge to the California Department of Fair Employment and Housing is not alleged in the SAC and insufficient as a matter of law. As set forth in the Reply, a claimant under Title VII must file a charge with the EEOC and receive a right-to-sue notice from the EEOC. See *Roman v. Cty. of Los Angeles*, 85 Cal. App. 4th 315, 326 (2000).

**B. Second Cause of Action: Willful Violation of FLSA**

The Court grants Defendant's Motion with leave to amend on Plaintiff's claim that she was not compensated for overtime. Plaintiff has not alleged that Plaintiff worked in excess of 40 hours per week and that Defendant failed to provide compensatory time off in lieu of overtime pay. See 29 U.S.C. § 207(a)(1).

As to the other claims in the Second Cause of Action, Defendant's Motion is denied without prejudice. Defendant has not provided adequate grounds to support dismissal of Plaintiff's meal and rest period claims at this time.

**C. Third Cause of Action: Retaliation in Violation of FLSA**

The Court denies Defendant's Motion on the Third Cause of Action without prejudice. Defendant has not provided adequate support that Plaintiff's claim is insufficient as a matter of law.

**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

1055 West Seventh Street, Suite 1400, Los Angeles, CA 90017  
(213) 439-6770 (800) 700-2320 Fax (213) 439-6780



March 26, 2010

ANDREA GUY-JACKSON  
20030 Eddington Drive  
Carson, CA 90746

RE: E200910R0408-00-rc  
GUY-JACKSON/BEVERLY HILLS, CITY OF, POLICE DEPARTMENT

Dear ANDREA GUY-JACKSON:

**NOTICE OF CASE CLOSURE**

This letter informs that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective February 3, 2010 because an immediate right-to-sue notice was requested. DFEH will take no further action on the complaint.

This letter is also the Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.


If a federal notice of Right-To-Sue is wanted, the U.S. Equal Employment Opportunity Commission (EEOC) must be visited to file a complaint within 30 days of receipt of this DFEH *Notice of Case Closure* or within 300 days of the alleged discriminatory act, whichever is earlier.



Notice of Case Closure  
Page Two

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,

A handwritten signature in cursive script that reads "Tina Walker".

Tina Walker  
District Administrator

cc: Case File

EEO Representative  
BEVERLY HILLS, CITY OF, POLICE DEPARTMENT  
464 N. Rexford Drive  
Beverly Hills, CA 90210

STATE OF CALIFORNIA - State and Consumer Services Agency

ARNOLD SCHWARZENEGGER Governor

## DEPARTMENT OF FAIR EMPLOYMENT &amp; HOUSING

(SEE ADDRESS CHECKED BELOW)



TTY # (800) 706-2320

☐  
H4800 Stockdale Hwy., Suite 215  
Bakersfield, CA 93309  
(661) 395-2729Ms. Sandra Olivencia-Curtis  
Human Resources  
City of Beverly Hills Police Dept  
450 N. Rexford Drive  
Beverly Hills, CA 90210EEOC Number:  
480-2008-03977Case Name:  
Andrea Guy-Jackson  
Date: 8/21/2008☐  
C1320 E. Shaw Avenue, Suite 150  
Fresno, CA 93710  
(559) 244-4760

## NOTICE TO COMPLAINANT AND RESPONDENT

☐  
R/S/T611 West Sixth Street, Suite 1500  
Los Angeles, CA 90017  
(213) 439-6799

This is to advise you that the above-referenced complaint is being referred to the California Department of Fair Employment and Housing (DFEH) by the U.S. Equal Employment Opportunity Commission (EEOC). The complaint will be filed in accordance with California Government Code section 12960. This notice constitutes service pursuant to Government Code section 12962.

☐  
M1515 Clay Street, Suite 701  
Oakland, CA 94612  
(510) 622-2941

No response to the DFEH is required by the respondent.

☐  
E2000 "O" Street, Suite 120  
Sacramento, CA 95814  
(916) 445-5523

The EEOC will be responsible for the processing of this complaint. DFEH will not be conducting an investigation into this matter. EEOC should be contacted directly for any discussion of the charge. DFEH is closing its case on the basis of "processing waived to another agency."

☐  
D1350 Front Street, Suite 3005  
San Diego, CA 92101  
(619) 645-2681

## NOTICE TO COMPLAINANT OF RIGHT-TO-SUE

☐  
ASan Francisco District Office  
1515 Clay Street, Suite 701  
Oakland, CA 94612  
(510) 622-2973

Since DFEH will not be issuing an accusation, this letter is also your right-to-sue notice. According to Government Code section 12965, subdivision (b), you may bring a civil action under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The lawsuit may be filed in a State of California Superior or Justice Court. Government Code section 12965, subdivision (b), provides that such a civil action must be brought within one year from the date of this notice. Pursuant to Government Code section 12965, subdivision (d)(1), this one-year period will be tolled during the pendency of the EEOC's investigation of your complaint. You should consult an attorney to determine with accuracy the date by which a civil action must be filed. This right to file a civil action may be waived in the event a settlement agreement is signed. Questions about the right to file under federal law should be referred to the EEOC.

☐  
G2570 North First Street, Suite 480  
San Jose, CA 95131  
(408) 325-0344

The DFEH does not retain case records beyond three years after a complaint is filed.

Remember: This Right-To-Sue Notice allows you to file a private lawsuit in State court.

Sincerely,

  
WANDA J. KIRBY  
Acting Director

1 Donald L. Samuels (State Bar No. 126287)  
2 Email: donald.samuels@hro.com  
3 Nicole D. Gomes (CA State Bar No. 218099)  
4 Email: nicole.gomes@hro.com  
5 HOLME ROBERTS & OWEN LLP  
6 800 W. Olympic Blvd., 4<sup>th</sup> Floor  
7 Los Angeles, CA 90015  
8 Telephone: (213) 572-4300  
9 Facsimile: (213) 572-4400

10 Attorneys for Defendant  
11 CITY OF BEVERLY HILLS

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14 WESTERN DIVISION

15 ANDREA GUY JACKSON  
16 Plaintiff,

17 v.

18 CITY OF BEVERLY HILLS, and DOES  
19 1-20, inclusive,  
20 Defendants.

CASE NO. CV10-2143 DMG (JCx)

HON. DOLLY GEE

**DEFENDANT CITY OF BEVERLY  
HILLS' NOTICE OF RELATED  
CASE**

**TO ALL PARTIES APPEARING OF RECORD:**

This will serve as notice that *Wilcher v. City of Beverly Hills et al.*, United States District Court, Central District, Case No. 2:10-CV-01804-VBF-AGR, appears to be a related case in that it may call for the determination of the same or substantially identical questions of law and/or fact. Both the above-captioned case and the *Wilcher* case have been filed against the City of Beverly Hills (the "City"), and both cases have been brought by City jailers who were transferred into Record Technician I positions. In addition, both the plaintiff in the above-captioned case, Andrea Guy Jackson ("Plaintiff"), and the plaintiff in the *Wilcher* case have brought claims for: 1) Retaliation in Violation of Title VII of the Civil Rights Act of 1964 ("Title VII"); 2) Willful Violation of the Fair Labor Standards Act ("FLSA"); and 3) Retaliation in Violation of the FLSA,<sup>1</sup> all of which claims are based on similar allegations as they relate to each plaintiff, respectively. Further, both the above-captioned case and the *Wilcher* case will require determinations on:

- What constitutes "reasonably related" in terms of allegations in a previously-filed Equal Employment Opportunity Commission ("EEOC") charge and allegations in a subsequent civil complaint, for which allegations an EEOC charge[s] has not been filed;
- Whether a plaintiff may exhaust her administrative remedies as to her federal Title VII claims by filing a complaint with the state Department of Fair Employment and Housing;
- Whether pay for daily overtime is required under federal law;
- Whether the City is allowed to provide compensatory time in lieu of overtime pay;

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<sup>1</sup> Of note, Plaintiff also has brought a claim for Racial Discrimination in Violation of Title VII, which claim was not brought in the *Wilcher* case.

- Whether federal law requires meal periods;
- Whether federal law allows pay in lieu of meal periods; and
- Whether federal law requires rest periods.

For the above-stated reasons, the *Wilcher* case appears to be related to the above-captioned case.

Dated: April 16, 2010

HOLME ROBERTS & OWEN LLP

By: s/Nicole D. Gomes

Donald L. Samuels

Nicole D. Gomes

Attorneys for Defendant

CITY OF BEVERLY HILLS

**PROOF OF SERVICE**  
**1013 A(3) CCP REVISED 5/1/88**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 800 West Olympic Boulevard, 4<sup>th</sup> Floor, Los Angeles, CA 90015.

On April 16, 2010, I served the foregoing document described as **DEFENDANT CITY OF BEVERLY HILL'S NOTICE OF RELATED CASE** on the interested party in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

**SEE ATTACHED SERVICE LIST**

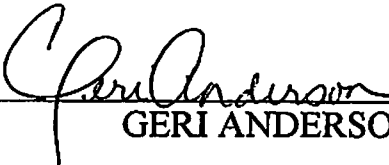
☐ BY MAIL: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ BY PERSONAL SERVICE: I caused the above-mentioned document to be personally served to the offices of the addressee.

☒ BY ELECTRONIC MAIL: I caused the above-referenced document to be served to the addressee on the attached service list via CM/ECF.

Executed on April 16, 2010, at Los Angeles, California.

☒ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

  
GERI ANDERSON

**SERVICE LIST**

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*Attorney for Plaintiff*